

Claims 1-5 are presented for examination.

Applicants' request for continued examinations filed October 15, 2009 and October 29, 2009; the information disclosure statements filed October 15, 2009 and October 29, 2009; and the amendment and response filed September 30, 2009 have been received and entered.

Accordingly, the rejection made under provisional obviousness-type double patenting over claims 1-6 of copending Application No. 11/244,903 as set forth in the previous Office action dated July 30, 2009 at page 2 as applied to claims 1-12 is hereby withdrawn copending Application No. 11/244,903 is known abandoned.

Accordingly, the rejection made under 35 USC 103(a) as being obvious over WO 01/87372 A1, hereby known as Kopia et al. in view of Roorda et al., (US 2002/0188277 A1) and further in view of DeHaan et al. (4,743,327) as set forth in the previous Office action dated July 30, 2009 at pages 3-4 as applied to claims 1-12 is hereby withdrawn because of applicants' amendments to claim 1.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-5 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 5-8 of U.S. Patent No. 7,419,678 B2.

Although the conflicting claims are not identical, they are not patentably distinct from each other because the present application is merely a different wording representation. In some aspects, the claims of the present application may be broader in some respects and add features in other aspects.

Claims 1-5 are not allowed.

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Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-5 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-6 of copending Application No. 11/149,466. Although the conflicting claims are not identical, they are not patentably distinct from each other because the present application is merely a different wording representation. In some aspects, the claims of the present application may be broader in some respects and add features in other aspects.

Claims 1-5 are not allowed.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KEVIN WEDDINGTON whose telephone number is (571)272-0587. The examiner can normally be reached on 12:30 pm - 9:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ardin Marschel can be reached on (571)272-0718. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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